

105TH CONGRESS
2D SESSION

H. R. 3749

To amend the Communications Act of 1934 to improve the protection of consumers against “slamming” by telecommunications carriers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 29, 1998

Mr. BASS (for himself and Mr. GOODLATTE) introduced the following bill;
which was referred to the Committee on Commerce

A BILL

To amend the Communications Act of 1934 to improve the protection of consumers against “slamming” by telecommunications carriers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. IMPROVED PROTECTION FOR CONSUMERS.**

4 (a) VERIFICATION OF AUTHORIZATION.—Subsection
5 (a) of section 258 of the Communications Act of 1934 (47
6 U.S.C. 258) is amended to read as follows:

7 “(a) PROHIBITION.—

8 “(1) IN GENERAL.—No telecommunications
9 carrier or reseller of telecommunications services

1 shall submit or execute a change in a subscriber's
2 selection of a provider of telephone exchange service
3 or telephone toll service except in accordance with
4 this section and such verification procedures as the
5 Commission shall prescribe.

6 “(2) VERIFICATION.—

7 “(A) IN GENERAL.—In order to verify a
8 subscriber's selection of a telephone exchange
9 service or telephone toll service provider under
10 this section, the telecommunications carrier or
11 reseller shall, at a minimum, require the sub-
12 scriber—

13 “(i) to acknowledge the type of service
14 to be changed as a result of the selection;

15 “(ii) to affirm the subscriber's intent
16 to select the provider as the provider of
17 that service;

18 “(iii) to affirm that the consumer is
19 the subscriber or is authorized to select the
20 provider of that service for the telephone
21 number in question;

22 “(iv) to acknowledge that the selection
23 of the provider will result in a change in
24 providers of that service; and

1 “(v) to provide such other information
2 as the Commission considers appropriate
3 for the protection of the subscriber.

4 “(B) ADDITIONAL REQUIREMENTS.—The
5 procedures prescribed by the Commission to
6 verify a subscriber’s selection of a provider
7 shall—

8 “(i) preclude the use of negative op-
9 tion marketing;

10 “(ii) provide for verification of a
11 change in telephone exchange service or
12 telephone toll service provider in oral, writ-
13 ten, or electronic form; and

14 “(iii) require the retention of such
15 verification in such manner and form and
16 for such time as the Commission considers
17 appropriate.

18 “(3) INTRASTATE SERVICES.—Nothing in this
19 section shall preclude any State commission from en-
20 forcing such procedures with respect to intrastate
21 services.

22 “(4) SECTION NOT TO APPLY TO WIRELESS.—
23 This section does not apply to a provider of commer-
24 cial mobile service, as that term is defined in section
25 332(d)(1) of this Act.”.

1 (b) RESOLUTION OF COMPLAINTS.—Section 258 of
2 the Communications Act of 1934 (47 U.S.C. 258) is
3 amended by adding at the end thereof the following:

4 “(c) NOTICE TO SUBSCRIBER.—Whenever there is a
5 change in a subscriber’s selection of a provider of tele-
6 phone exchange service or telephone toll service, the tele-
7 communications carrier or reseller selected shall notify the
8 subscriber in writing, not more than 15 days after the
9 change is processed by the telecommunications carrier or
10 the reseller—

11 “(1) of the subscriber’s new carrier; and

12 “(2) that the subscriber may request informa-
13 tion regarding the date on which the change was
14 agreed to and the name of the individual who au-
15 thorized the change.

16 “(d) RESOLUTION OF COMPLAINTS.—

17 “(1) PROMPT RESOLUTION.—

18 “(A) IN GENERAL.—The Commission shall
19 prescribe a period of time, not in excess of 120
20 days after a telecommunications carrier or re-
21 seller receives notice, for the telecommuni-
22 cations carrier or reseller to resolve a complaint
23 by a subscriber concerning an unauthorized
24 change in the subscriber’s selection of a pro-

1 vider of telephone exchange service or telephone
2 toll service.

3 “(B) UNRESOLVED COMPLAINTS.—If a
4 telecommunications carrier or reseller fails to
5 resolve a complaint within the time period pre-
6 scribed by the Commission, then, within 10
7 days after the end of that period, the tele-
8 communications carrier or reseller shall—

9 “(i) notify the subscriber in writing of
10 the subscriber’s right to file a complaint
11 with the Commission concerning the unre-
12 solved complaint, the subscriber’s rights
13 under this section, and all other remedies
14 available to the subscriber concerning un-
15 authorized changes;

16 “(ii) inform the subscriber in writing
17 of the procedures prescribed by the Com-
18 mission for filing such a complaint; and

19 “(iii) provide the subscriber a copy of
20 any evidence in the carrier’s or reseller’s
21 possession showing that the change in the
22 subscriber’s provider of telephone exchange
23 service or telephone toll service was sub-
24 mitted or executed in accordance with the

1 verification procedures prescribed under
2 subsection (a).

3 “(2) RESOLUTION BY COMMISSION.—The Com-
4 mission shall provide a simplified process for resolv-
5 ing complaints under paragraph (1)(B). The sim-
6 plified procedure shall preclude the use of interroga-
7 tories, depositions, discovery, or other procedural
8 techniques that might unduly increase the expense,
9 formality, and time, involved in the process. The
10 Commission shall issue an order resolving any such
11 complaint at the earliest date practicable, but in no
12 event later than—

13 “(A) 150 days after the date on which it
14 received the complaint, with respect to liability
15 issues; and

16 “(B) 90 days after the date on which it re-
17 solves a complaint, with respect to damages
18 issues, if such additional time is necessary.

19 “(3) DAMAGES AWARDED BY COMMISSION.—In
20 resolving a complaint under paragraph (1)(B), the
21 Commission may award damages equal to the great-
22 er of \$500 or the amount of actual damages. The
23 Commission may, in its discretion, increase the
24 amount of the award to an amount equal to not

1 more than 3 times the amount available under the
2 preceding sentence.

3 “(e) PENALTY.—

4 “(1) IN GENERAL.—Unless the Commission de-
5 termines that there are mitigating circumstances,
6 violation of subsection (a) is punishable by a fine of
7 not less than \$40,000 for the first offense, and not
8 less than \$150,000 for each subsequent offense.

9 “(2) FAILURE TO NOTIFY TREATED AS VIOLA-
10 TION OF SUBSECTION (a).—If a telecommunications
11 carrier or reseller fails to comply with the require-
12 ments of subsection (d)(1)(B), then that failure shall
13 be treated as a violation of subsection (a).

14 “(f) RECOVERY OF FINES.—The Commission may
15 take such action as may be necessary—

16 “(1) to collect any fines it imposes under this
17 section; and

18 “(2) on behalf of any subscriber, any damages
19 awarded the subscriber under this section.

20 “(g) CHANGE INCLUDES INITIAL SELECTION.—For
21 purposes of this section, the initiation of service to a sub-
22 scriber by a telecommunications carrier or a reseller shall
23 be treated as a change in a subscriber’s selection of a pro-
24 vider of telephone exchange service or telephone toll serv-
25 ice.”.

1 (c) STATE RIGHT-OF-ACTION.—Section 258 of the
2 Communications Act of 1934 (47 U.S.C. 258), as amend-
3 ed by subsection (b), is amended by adding at the end
4 thereof the following:

5 “(h) ACTIONS BY STATES.—

6 “(1) AUTHORITY OF STATES.—Whenever the
7 attorney general of a State, or an official or agency
8 designated by a State, has reason to believe that a
9 telecommunications carrier or reseller has engaged
10 or is engaging in a pattern or practice of changing
11 telephone exchange service or telephone toll service
12 provider without authority from subscribers in that
13 State in violation of this section or the regulations
14 prescribed under this section, the State may bring a
15 civil action on behalf of its residents to enjoin such
16 unauthorized changes, an action to recover for ac-
17 tual monetary loss or receive \$500 in damages for
18 each violation, or both such actions. If the court
19 finds the defendant willfully or knowingly violated
20 such regulations, the court may, in its discretion, in-
21 crease the amount of the award to an amount equal
22 to not more than 3 times the amount available
23 under the preceding sentence.

24 “(2) EXCLUSIVE JURISDICTION OF FEDERAL
25 COURTS.—The district courts of the United States,

1 the United States courts of any territory, and the
2 District Court of the United States for the District
3 of Columbia shall have exclusive jurisdiction over all
4 civil actions brought under this subsection. Upon
5 proper application, such courts shall also have juris-
6 diction to issue writs of mandamus, or orders afford-
7 ing like relief, commanding the defendant to comply
8 with the provisions of this section or regulations pre-
9 scribed under this section, including the requirement
10 that the defendant take such action as is necessary
11 to remove the danger of such violation. Upon a prop-
12 er showing, a permanent or temporary injunction or
13 restraining order shall be granted without bond.

14 “(3) RIGHTS OF COMMISSION.—The State shall
15 serve prior written notice of any such civil action
16 upon the Commission and provide the Commission
17 with a copy of its complaint, except in any case
18 where such prior notice is not feasible, in which case
19 the State shall serve such notice immediately upon
20 instituting such action. The Commission shall have
21 the right—

22 “(A) to intervene in the action;

23 “(B) upon so intervening, to be heard on
24 all matters arising therein; and

25 “(C) to file petitions for appeal.

1 “(4) VENUE; SERVICE OF PROCESS.—Any civil
2 action brought under this subsection in a district
3 court of the United States may be brought in the
4 district wherein the defendant is found or is an in-
5 habitant or transacts business or wherein the viola-
6 tion occurred or is occurring, and process in such
7 cases may be served in any district in which the de-
8 fendant is an inhabitant or where the defendant may
9 be found.

10 “(5) INVESTIGATORY POWERS.—For purposes
11 of bringing any civil action under this subsection,
12 nothing in this section shall prevent the attorney
13 general of a State, or an official or agency des-
14 ignated by a State, from exercising the powers con-
15 ferred on the attorney general or such official by the
16 laws of such State to conduct investigations or to
17 administer oaths or affirmations or to compel the
18 attendance of witnesses or the production of docu-
19 mentary and other evidence.

20 “(6) EFFECT ON STATE COURT PROCEED-
21 INGS.—Nothing contained in this subsection shall be
22 construed to prohibit an authorized State official
23 from proceeding in State court on the basis of an al-
24 leged violation of any general civil or criminal stat-
25 ute of such State.

1 “(7) LIMITATION.—Whenever the Commission
2 has instituted a civil action for violation of regula-
3 tions prescribed under this section, no State may,
4 during the pendency of such action instituted by the
5 Commission, subsequently institute a civil action
6 against any defendant named in the Commission’s
7 complaint for any violation as alleged in the Com-
8 mission’s complaint.

9 “(8) DEFINITION.—As used in this subsection,
10 the term ‘attorney general’ means the chief legal of-
11 ficer of a State.

12 “(i) STATE LAW NOT PREEMPTED.—Nothing in this
13 section or in the regulations prescribed under this section
14 shall preempt any State law that imposes more restrictive
15 intrastate requirements or regulations on, or which pro-
16 hibits unauthorized changes in, a subscriber’s selection of
17 a provider of telephone exchange service or telephone toll
18 service.”.

19 (d) REPORT ON CARRIERS EXECUTING UNAUTHOR-
20 IZED CHANGES OF TELEPHONE SERVICE.—

21 (1) REPORT.—Not later than October 31,
22 1998, the Federal Communications Commission
23 shall submit to Congress a report on unauthorized
24 changes of subscribers’ selections of providers of
25 telephone exchange service or telephone toll service.

1 (2) ELEMENTS.—The report shall include the
2 following:

3 (A) A list of the 10 telecommunications
4 carriers that, during the 1-year period ending
5 on the date of the report, were subject to the
6 highest number of complaints of having exe-
7 cuted unauthorized changes of subscribers from
8 their selected providers of telephone exchange
9 service or telephone toll service when compared
10 with the total number of subscribers served by
11 such carriers.

12 (B) The telecommunications carriers, if
13 any, assessed fines under section 258(e) of the
14 Communications Act of 1934 (as added by sub-
15 section (c)), during that period, including the
16 amount of each such fine and whether the fine
17 was assessed as a result of a court judgment or
18 an order of the Commission or was secured pur-
19 suant to a consent decree.

20 **SEC. 2. REPORT ON TELEMARKETING PRACTICES.**

21 (a) IN GENERAL.—The Federal Communications
22 Commission shall issue a report within 180 days after the
23 date of enactment of this Act on the telemarketing prac-
24 tices used by telecommunications carriers or resellers or
25 their agents or employees for the purpose of soliciting

1 changes by subscribers of their telephone exchange service
2 or telephone toll service provider.

3 (b) SPECIFIC ISSUES.—As part of the report required
4 under subsection (a), the Commission shall include find-
5 ings on—

6 (1) the extent to which imposing penalties on
7 telemarketers would deter unauthorized changes in a
8 subscriber’s selection of a provider of telephone ex-
9 change service or telephone toll service;

10 (2) the need for rules requiring third-party ver-
11 ification of changes in a subscriber’s selection of
12 such a provider; and

13 (3) whether wireless carriers should continue to
14 be exempt from the verification and retention re-
15 quirements imposed by section 258(a)(2)(B)(iii) of
16 the Communications Act of 1934 (47 U.S.C.
17 258(a)(2)(B)(iii)).

18 (c) RULEMAKING.—If the Commission determines
19 that particular telemarketing practices are being used with
20 the intention to mislead, deceive, or confuse subscribers
21 and that they are likely to mislead, deceive, or confuse
22 subscribers, then the Commission shall initiate a rule-
23 making to prohibit the use of such practices within 120
24 days after the completion of its report.

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